

Calendar No. 165

111TH CONGRESS
1ST SESSION**S. 1670**

To reform and modernize the limitations on exclusive rights relating to
secondary transmissions of certain signals.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2009

Mr. LEAHY (for himself, Mr. SESSIONS, Mr. KOHL, Mr. HATCH, and Mr.
KYL) introduced the following bill; which was read twice and referred to
the Committee on the Judiciary

SEPTEMBER 24, 2009

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To reform and modernize the limitations on exclusive rights
relating to secondary transmissions of certain signals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satellite Television
5 Modernization Act of 2009”.

1 **SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY**
 2 **TRANSMISSIONS OF SUPERSTATIONS AND**
 3 **NETWORK STATIONS FOR PRIVATE HOME**
 4 **VIEWING.**

5 Section 119 of title 17, United States Code, is
 6 amended—

7 (1) in subsection (a)—

8 (A) in paragraph (2)—

9 (i) in subparagraph (A)—

10 (I) by striking “subparagraphs
 11 (B) and (C)” and inserting “subpara-
 12 graph (B)”; and

13 (II) by striking “(5), (6), (7),
 14 and (8)” and inserting “(4), (5), (6),
 15 and (7)”; and

16 (ii) in subparagraph (B)—

17 ~~(I) in clause (i), by striking the~~
 18 ~~second sentence; and~~

19 *(I) in clause (i)—*

20 *(aa) in the first sentence, by*
 21 *inserting before the period the fol-*
 22 *lowing: “, except that a satellite*
 23 *provider lawfully serving a sub-*
 24 *scriber with a distant network*
 25 *station pursuant to this subpara-*
 26 *graph while a network station af-*

1 *filiated with such network was*
 2 *broadcasting in analog shall not*
 3 *be required to re-qualify such sub-*
 4 *scriber to receive such distant sta-*
 5 *tion under the digital predictive*
 6 *model established by the Federal*
 7 *Communications Commission”;*
 8 *and*

9 *(bb) by striking the second*
 10 *sentence; and*

11 (II) in clause (ii)—

12 ~~(aa) in subclause (I)—~~

13 ~~(AA) by striking “the~~
 14 ~~Individual Location” and all~~
 15 ~~that follows through “No.~~
 16 ~~98-201,” and inserting “the~~
 17 ~~predictive digital model es-~~
 18 ~~tablished by the Federal~~
 19 ~~Communications Commis-~~
 20 ~~sion,”; and~~

21 ~~(BB) by striking~~
 22 ~~“under section 339(c)(3) of~~
 23 ~~the Communications Act of~~
 24 ~~1934 (47 U.S.C.~~
 25 ~~339(c)(3))”;~~ and

(aa) in subclause (I), by striking “the court shall rely” and all that follows through the period at the end and insert the following: “a court shall rely, with respect to a signal originating as an analog signal, on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201, and shall rely, with respect to a signal originating as a digital signal, on the predictive model established by the Federal Communications Commission, as that model may be amended over time to increase the accuracy of that model.”; and

(bb) in subclause (II), by striking “section 339(c)(4) of the Communications Act of 1934 (47 U.S.C. 339(c)(4))” and inserting “rules established by the Federal Communications Commission”;

(iii) by striking subparagraph (C);

1 (iv) by redesignating subparagraph
 2 (D) as subparagraph (C); and

3 (v) in subparagraph (C) (as so rededesignated)—

5 (I) in clause (i), by striking “network station—” and all that follows
 6 through the period at the end and inserting “network station a list, aggregated by designated market area (as
 7 that term is defined in section
 8 122(j)), identifying (by name and address, including street or rural route
 9 number, city, State, and zip code) all
 10 subscribers to which the satellite carrier makes secondary transmissions of
 11 that primary transmission to subscribers in unserved households.”;

18 (II) in clause (ii), by striking
 19 “the network—” and all that follows
 20 through the period at the end and inserting “the network a list, aggregated by designated market area (as
 21 that term is defined in section
 22 122(j)), identifying (by name and address, including street or rural route
 23
 24
 25

1 number, city, State, and zip code) any
 2 persons who have been added or
 3 dropped as subscribers under clause
 4 (i)(I) since the last submission under
 5 clause (i).”; and

6 (III) in clause (iv), at the end of
 7 the second sentence, by striking the
 8 ending quotation mark and semicolon;

9 (B) by striking paragraph (3);

10 (C) by redesignating paragraphs (4)
 11 through (14) as paragraphs (3) through (13),
 12 respectively;

13 (D) by amending paragraph (3) (as so re-
 14 designated) to read as follows:

15 “(3) STATUTORY LICENSE WHERE RETRANS-
 16 MISSIONS INTO LOCAL MARKET AVAILABLE.—

17 “(A) FUTURE APPLICABILITY.—The statu-
 18 tory license under paragraph (2) shall not apply
 19 to the secondary transmission by a satellite car-
 20 rier of a primary transmission of a network sta-
 21 tion to a person who—

22 “(i) is not a subscriber lawfully receiv-
 23 ing such secondary transmission as of De-
 24 cember 31, 2009; and

1 “(ii) at the time such person seeks to
2 subscribe to receive such secondary trans-
3 mission, resides in a local market where
4 the satellite carrier makes available to that
5 person the secondary transmission of the
6 primary transmission of a local network
7 station affiliated with the same television
8 network pursuant to the statutory license
9 under section 122, and such secondary
10 transmission of such primary transmission
11 can reach such person.

12 “(B) OTHER PROVISIONS NOT AF-
13 FECTED.—This paragraph shall not affect the
14 applicability of the statutory license to sec-
15 ondary transmissions to unserved households
16 included under paragraph (11).

17 “(C) WAIVER.—A subscriber who is denied
18 the secondary transmission of a network station
19 under this paragraph may request a waiver
20 from such denial by submitting a request,
21 through the subscriber’s satellite carrier, to the
22 network station in the local market affiliated
23 with the same network where the subscriber is
24 located. The network station shall accept or re-
25 ject the subscriber’s request for a waiver within

1 30 days after receipt of the request. If the net-
2 work station fails to accept or reject the sub-
3 scriber's request for a waiver within that 30-
4 day period, that network station shall be
5 deemed to agree to the waiver request. Unless
6 specifically stated by the network station, a
7 waiver that was granted before the date of the
8 enactment of the Satellite Home Viewer Exten-
9 sion and Reauthorization Act of 2004 under
10 section 339(c)(2) of the Communications Act of
11 1934 (47 U.S.C. 339(c)(2)) shall not constitute
12 a waiver for purposes of this subparagraph.

13 “(D) AVAILABLE DEFINED.—For purposes
14 of this paragraph, a satellite carrier makes
15 available a secondary transmission of the pri-
16 mary transmission of a local station to a sub-
17 scriber or person if the satellite carrier offers
18 that secondary transmission to other sub-
19 scribers who reside in the same *nine-digit* zip
20 code as that subscriber or person.”;

21 (E) in paragraph (4) (as so redesignated),
22 by striking “section 509”;

23 (F) in paragraph (6) (as so redesign-
24 nated)—

1 (i) in subparagraph (A)(ii), by strik-
 2 ing “\$5” and inserting “\$250”; and

3 (ii) in subparagraph (B)—

4 (I) in clause (i), by striking
 5 “\$250,000” and inserting
 6 “\$2,500,000”; and

7 (II) in clause (ii), by striking
 8 “\$250,000” and inserting
 9 “\$2,500,000”;

10 (G) by striking paragraph (15); and

11 (H) by redesignating paragraph (16) as
 12 paragraph (14);

13 (2) in subsection (b)—

14 (A) by striking the subsection heading and
 15 inserting “(b) DEPOSITS AND DISTRIBUTION
 16 OF ROYALTY FEES.—”; and

17 (B) in paragraph (1), by striking the mat-
 18 ter following subparagraph (B);

19 (3) by amending subsection (c) to read as fol-
 20 lows:

21 “(c) ADJUSTMENT OF ROYALTY FEES.—

22 “(1) APPLICABILITY AND DETERMINATION OF
 23 ROYALTY FEES.—

24 “(A) INITIAL FEE.—The appropriate fee
 25 for purposes of determining the royalty fee

1 under subsection (b)(1)(B) for the secondary
2 transmission of the primary transmissions of
3 network stations and superstations shall be the
4 appropriate fee set forth in subchapter E of
5 chapter III of title 37, Code of Federal Regula-
6 tions, as in effect on July 1, 2009, as modified
7 under this paragraph.

8 “(B) FEE SET BY VOLUNTARY NEGOTIA-
9 TION.—On or before January 4, 2010, Copy-
10 right Royalty Judges shall cause to be pub-
11 lished in the Federal Register of the initiation
12 of voluntary negotiation proceedings for the
13 purpose of determining the royalty fee to be
14 paid by satellite carriers for the secondary
15 transmission of the primary transmission of
16 network stations and superstations under sub-
17 section (b)(1)(B).

18 “(C) NEGOTIATIONS.—Satellite carriers,
19 distributors, and copyright owners entitled to
20 royalty fees under this section shall negotiate in
21 good faith in an effort to reach a voluntary
22 agreement or agreements for the payment of
23 royalty fees. Any such satellite carriers, dis-
24 tributors, and copyright owners may at any
25 time negotiate and agree to the royalty fee, and

1 may designate common agents to negotiate,
2 agree to, or pay such fees. If the parties fail to
3 identify common agents, Copyright Royalty
4 Judges shall do so, after requesting rec-
5 ommendations from the parties to the negotia-
6 tion proceeding. The parties to each negotiation
7 proceeding shall bear the cost thereof.

8 “(D)(i) AGREEMENTS BINDING ON PAR-
9 TIES; FILING OF AGREEMENTS; PUBLIC NO-
10 TICE.—Voluntary agreements negotiated at any
11 time in accordance with this paragraph shall be
12 binding upon all satellite carriers, distributors,
13 and copyright owners that are parties thereto.
14 Copies of such agreements shall be filed with
15 the Copyright Office within 30 days after exe-
16 cution in accordance with regulations that the
17 Register of Copyrights shall prescribe.

18 “(ii)(I) Within 10 days after publication in
19 the Federal Register of a notice of the initiation
20 of voluntary negotiation proceedings, parties
21 who have reached a voluntary agreement may
22 request that the royalty fees in that agreement
23 be applied to all satellite carriers, distributors,
24 and copyright owners without convening a pro-
25 ceeding pursuant to subparagraph (F).

1 “(II) Upon receiving a request under sub-
2 clause (I), the Copyright Royalty Judges shall
3 immediately provide public notice of the royalty
4 fees from the voluntary agreement and afford
5 parties an opportunity to state that they object
6 to those fees.

7 “(III) The Copyright Royalty Judges shall
8 adopt the royalty fees from the voluntary agree-
9 ment for all satellite carriers, distributors, and
10 copyright owners without convening a pro-
11 ceeding unless a party with an intent to partici-
12 pate in the proceeding and a significant interest
13 in the outcome of that proceeding objects under
14 subclause (II).

15 “(E) PERIOD AGREEMENT IS IN EF-
16 FECT.—The obligation to pay the royalty fees
17 established under a voluntary agreement which
18 has been filed with the Copyright Office in ac-
19 cordance with this paragraph shall become ef-
20 fective on the date specified in the agreement,
21 and shall remain in effect until December 31,
22 2014, or in accordance with the terms of the
23 agreement, whichever is later.

24 “(F) PROCEEDING TO ESTABLISH ROY-
25 ALTY FEES.—

1 “(i) NOTICE OF INITIATION OF PRO-
2 CEEDINGS; VOLUNTARY AGREEMENTS.—
3 On or before May 3, 2010, the Copyright
4 Royalty Judges shall cause notice to be
5 published in the Federal Register of the
6 initiation of proceedings for the purpose of
7 determining the royalty fee to be paid for
8 the secondary transmission of primary
9 transmission of network stations and
10 superstations under subsection (b)(1)(B)
11 by satellite carriers and distributors—

12 “(I) in the absence of a voluntary
13 agreement filed in accordance with
14 subparagraph (D) that establishes
15 royalty fees to be paid by all satellite
16 carriers and distributors; or

17 “(II) if an objection to the fees
18 from a voluntary agreement submitted
19 for adoption by the Copyright Royalty
20 Judges to apply to all satellite car-
21 riers, distributors, and copyright own-
22 ers is received under subparagraph
23 (D) from a party with an intent to
24 participate in the proceeding and a

1 significant interest in the outcome of
2 that proceeding.

3 Such proceeding shall be conducted as pro-
4 vided under chapter 8 of this title.

5 “(ii) ESTABLISHMENT OF ROYALTY
6 FEES.—In determining royalty fees under
7 this paragraph, the Copyright Royalty
8 Judges shall establish fees for the sec-
9 ondary transmissions of the primary trans-
10 mission of network stations and supersta-
11 tions that most clearly represent the fair
12 market value of secondary transmissions,
13 except that the Copyright Royalty Judges
14 shall adjust those fees to account for the
15 obligations of the parties under any appli-
16 cable voluntary agreement filed with the
17 Copyright Office pursuant to subparagraph
18 (D). In determining the fair market value,
19 the Copyright Royalty Judges shall base
20 their decision on economic, competitive,
21 and programming information presented
22 by the parties, including—

23 “(I) the competitive environment
24 in which such programming is distrib-
25 uted, the cost of similar signals in

1 similar private and compulsory license
2 marketplaces, and any special features
3 and conditions of the retransmission
4 marketplace;

5 “(II) the economic impact of
6 such fees on copyright owners and
7 satellite carriers; and

8 “(III) the impact on the contin-
9 ued availability of secondary trans-
10 missions to the public.

11 “(iii) PERIOD DURING WHICH DECI-
12 SION OF COPYRIGHT ROYALTY JUDGES EF-
13 FECTIVE.—The obligation to pay the roy-
14 alty fee established under a determination
15 which is made by the Copyright Royalty
16 Judges under this paragraph shall be ef-
17 fective as of January 1, 2010.

18 “(iv) PERSONS SUBJECT TO ROYALTY
19 FEE.—The royalty fee referred to clause
20 (iii) shall be binding on all satellite car-
21 riers, distributors, and copyright owners,
22 who are not party to a voluntary agree-
23 ment filed with the Copyright Office under
24 subparagraph (D).

1 “(2) ROYALTY FEE ANNUAL ADJUSTMENT.—

2 The royalty fee payable under subsection (b)(1)(B)
 3 for the secondary transmission of the primary trans-
 4 mission of network stations and superstations shall
 5 be adjusted annually by the Copyright Royalty
 6 Judges to reflect any changes occurring during the
 7 preceding 12 months in the cost of living as deter-
 8 mined by the most recent Consumer Price Index (for
 9 all consumers and items) published by the Secretary
 10 of Labor prior to December 1. Notification of the
 11 adjusted rates shall be published in the Federal Reg-
 12 ister prior to December 1 of that year.”;

13 (4) in subsection (d)—

14 (A) in paragraph (10)—

15 (i) by amending subparagraph (A) to
 16 read as follows:

17 “(A)(i) is located in a local market in
 18 which there is no primary network station affili-
 19 ated with such network licensed to a community
 20 within such local market; or

21 ~~“(ii) cannot receive, through the use of a~~
 22 ~~conventional, stationary, outdoor rooftop receiv-~~
 23 ~~ing antenna, an over-the-air signal of a primary~~
 24 ~~network station affiliated with that network~~
 25 ~~that does not exceed the signal intensity stand-~~

1 ~~and in section 73.622(e)(1) of title 47 of the~~
 2 ~~Code of Federal Regulations as in effect on~~
 3 ~~January 1, 2010;”;~~

4 “(ii) cannot receive through the use of a
 5 conventional, stationary, outdoor rooftop receiv-
 6 ing antenna, an—

7 “(I) over-the-air analog signal of a
 8 primary network station affiliated with
 9 that network that does not exceed Grade B
 10 intensity as defined by the Federal Commu-
 11 nications Commission under section
 12 73.683(a) of title 47 of the Code of Federal
 13 Regulations, as in effect on January 1,
 14 1999; or

15 “(II) over-the-air digital signal of a
 16 primary network station located in that
 17 household’s local market affiliated with that
 18 network that does not exceed the signal in-
 19 tensity standard in section 73.622(3)(1) of
 20 title 47 of the Code of Federal Regulations,
 21 as in effect on January 1, 2010;”;

22 (ii) in subparagraph (B), by striking
 23 “(a)(14)” and inserting “(a)(13)”; ~~and;~~

24 (iii) in subparagraph (D), by striking
 25 “(a)(12)” and inserting “(a)(10)(a)(11)”;

1 (B) in paragraph (11), by striking “, ex-
 2 cept that” and all that follows through “lo-
 3 cated”;

4 (C) by striking paragraph (12); and

5 (D) by redesignating paragraph (13) as
 6 paragraph (12); and

7 (5) by striking subsection (f).

8 **SEC. 3. LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY**
 9 **TRANSMISSIONS BY SATELLITE CARRIERS**
 10 **WITHIN LOCAL MARKETS.**

11 Section 122 of title 17, United States Code, is
 12 amended—

13 (1) by amending subsections (a), (b), and (c) to
 14 read as follows:

15 “(a) **SECONDARY TRANSMISSIONS OF TELEVISION**
 16 **BROADCAST STATIONS BY SATELLITE CARRIERS.—**

17 “(1) **SECONDARY TRANSMISSIONS OF TELE-**
 18 **VISION BROADCAST STATIONS WITHIN A LOCAL MAR-**
 19 **KET.—**A secondary transmission of a performance
 20 or display of a work embodied in a primary trans-
 21 mission of a television broadcast station into the sta-
 22 tion’s local market shall be subject to statutory li-
 23 censing under this section if—

24 “(A) the secondary transmission is made
 25 by a satellite carrier to the public;

1 “(B) with regard to secondary trans-
2 missions, the satellite carrier is in compliance
3 with the rules, regulations, or authorizations of
4 the Federal Communications Commission gov-
5 erning the carriage of television broadcast sta-
6 tion signals; and

7 “(C) the satellite carrier makes a direct or
8 indirect charge for the secondary transmission
9 to—

10 “(i) each subscriber receiving the sec-
11 ondary transmission; or

12 “(ii) a distributor that has contracted
13 with the satellite carrier for direct or indi-
14 rect delivery of the secondary transmission
15 to the public.

16 “(2) SIGNIFICANTLY VIEWED AND LOW POWER
17 STATIONS.—A secondary transmission of a perform-
18 ance or a display of a work embodied in a primary
19 transmission of a television broadcast station or low
20 power television station to subscribers who receive
21 secondary transmissions of primary transmissions
22 under paragraph (1) shall, if the secondary trans-
23 mission is made by a satellite carrier that complies
24 with the requirements of paragraph (1), be subject

1 to statutory licensing under this paragraph as fol-
 2 lows:

3 “(A) SECONDARY TRANSMISSIONS OF SIG-
 4 NIFICANTLY VIEWED SIGNALS.—The statutory
 5 license shall apply to the secondary trans-
 6 mission of the primary transmission of a net-
 7 work station or a superstation to a subscriber
 8 who resides outside the station’s local market
 9 but within a community in which the signal has
 10 been determined by the Federal Communica-
 11 tions Commission, to be significantly viewed in
 12 such community, pursuant to the rules, regula-
 13 tions, and authorizations of the Federal Com-
 14 munications Commission in effect on April 15,
 15 1976, applicable to determining with respect to
 16 a cable system whether signals are significantly
 17 viewed in a community.

18 “(B) CARRIAGE OF LOW POWER TELE-
 19 VISION STATIONS.—

20 “(i) IN GENERAL.—The statutory li-
 21 cense shall apply to the secondary trans-
 22 mission of the primary transmission of a
 23 ~~network station or a superstation~~*station*
 24 that is licensed as a low power television
 25 station, to a subscriber who resides ~~within~~

1 ~~the same local market~~*within the same des-*
 2 *ignated market area.*

3 “(ii) NO APPLICABILITY TO REPEAT-
 4 ERS AND TRANSLATORS.—Secondary
 5 transmissions provided for in subpara-
 6 graph (A) shall not apply to any low power
 7 television station that retransmits the pro-
 8 grams and signals of another television
 9 station for more than 2 hours each day.

10 “(3) SPECIAL EXCEPTIONS.—A secondary
 11 transmission of a performance or a display of a work
 12 embodied in a primary transmission of a television
 13 broadcast station to subscribers who receive sec-
 14 ondary transmissions of primary transmissions
 15 under paragraph (1) shall, if the secondary trans-
 16 mission is made by a satellite carrier that complies
 17 with the requirements of paragraph (1), be subject
 18 to statutory licensing under this paragraph as fol-
 19 lows:

20 “(A) STATES WITH SINGLE FULL-POWER
 21 NETWORK STATION.—In a State in which there
 22 is licensed by the Federal Communications
 23 Commission a single full-power station that was
 24 a network station on January 1, 1995, the stat-
 25 utory license provided for in this paragraph

1 shall apply to the secondary transmission by a
2 satellite carrier of the primary transmission of
3 that station to any subscriber in a community
4 that is located within that State and that is not
5 within the first 50 television markets as listed
6 in the regulations of the Commission as in ef-
7 fect on such date (47 C.F.R. 76.51).

8 “(B) STATES WITH ALL NETWORK STA-
9 TIONS AND SUPERSTATIONS IN SAME LOCAL
10 MARKET.—In a State in which all network sta-
11 tions and superstations licensed by the Federal
12 Communications Commission within that State
13 as of January 1, 1995, are assigned to the
14 same local market and that local market does
15 not encompass all counties of that State, the
16 statutory license provided under this paragraph
17 shall apply to the secondary transmission by a
18 satellite carrier of the primary transmissions of
19 such station to all subscribers in the State who
20 reside in a local market that is within the first
21 50 major television markets as listed in the reg-
22 ulations of the Commission as in effect on such
23 date (section 76.51 of title 47 of the Code of
24 Federal Regulations).

1 “(C) ADDITIONAL STATIONS.—In the case
2 of that State in which are located 4 counties
3 that—

4 “(i) on January 1, 2004, were in local
5 markets principally comprised of counties
6 in another State; and

7 “(ii) had a combined total of 41,340
8 television households, according to the U.S.
9 Television Household Estimates by Nielsen
10 Media Research for 2004,

11 the statutory license provided under this para-
12 graph shall apply to secondary transmissions by
13 a satellite carrier to subscribers in any such
14 county of the primary transmissions of any net-
15 work station located in that State, if the sat-
16 ellite carrier was making such secondary trans-
17 missions to any subscribers in that county on
18 January 1, 2004.

19 “(D) CERTAIN ADDITIONAL STATIONS.—If
20 2 adjacent counties in a single State are in a
21 local market comprised principally of counties
22 located in another State, the statutory license
23 provided for in this paragraph shall apply to
24 the secondary transmission by a satellite carrier
25 to subscribers in those 2 counties of the pri-

1 mary transmissions of any network station lo-
2 cated in the capital of the State in which such
3 2 counties are located, if—

4 “(i) the 2 counties are located in a
5 local market that is in the top 100 markets
6 for the year 2003 according to Nielsen
7 Media Research; and

8 “(ii) the total number of television
9 households in the 2 counties combined did
10 not exceed 10,000 for the year 2003 ac-
11 cording to Nielsen Media Research.

12 “(E) NETWORKS OF NONCOMMERCIAL
13 EDUCATIONAL BROADCAST STATIONS.—In the
14 case of a system of 3 or more noncommercial
15 educational broadcast stations licensed by a sin-
16 gle State, political, educational, or special pur-
17 pose subdivision of a State, or a public agency,
18 the statutory license provided for in this para-
19 graph shall apply to the secondary transmission
20 of that system to any subscriber in any county
21 or county equivalent within that State that is
22 located in a designated market that is not oth-
23 erwise eligible to receive secondary trans-
24 missions of a noncommercial television broad-
25 cast station located within that State pursuant

to paragraph (1). If a satellite carrier makes secondary transmissions to an adjacent underserved county, local noncommercial educational broadcast stations shall not be repositioned in the channel lineup as a consequence of these retransmissions.

“(4) SHORT MARKETS.—A secondary transmission of a performance of a display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of a primary transmission of a network station from a market adjacent to such local market and no station affiliated with such network is licensed to a community within the local market.

“(5) APPLICABILITY OF ROYALTY RATES.—The royalty rates under section 119(b)(1)(B) shall apply to the secondary transmissions to which the statutory license under paragraphs (3) and (4) apply.

“(b) REPORTING REQUIREMENTS.—

“(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection

(a) shall, within 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

“(A) a list, aggregated by designated market area (as that term is defined in subsection (j)), identifying (by name in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a); and

“(B) a list, to be prepared and submitted separately from the list required under subparagraph (A), aggregated by designated market area (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraphs (2), (3), or (4) of subsection (a).

“(2) SUBSEQUENT LISTS.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the network—

“(A) a list, aggregated by designated market area (as that term is defined in subsection (j)), identifying (by name in alphabetical order

1 and street address, including county and zip
2 code) any subscribers who have been added or
3 dropped as subscribers since the last submission
4 under this subsection; and

5 “(B) a list, to be prepared and submitted
6 separately from the list required under subpara-
7 graph (A), aggregated by designated market
8 area (by name and street address, including
9 street or rural route number, city, State, and
10 zip code), identifying those subscribers whose
11 service pursuant to paragraphs (2), (3), or (4)
12 of subsection (a) has been added or dropped.

13 “(3) USE OF SUBSCRIBER INFORMATION.—Sub-
14 scriber information submitted by a satellite carrier
15 under this subsection may be used only for the pur-
16 poses of monitoring compliance by the satellite car-
17 rier with this section.

18 “(4) REQUIREMENTS OF NETWORKS.—The sub-
19 mission requirements of this subsection shall apply
20 to a satellite carrier only if the network to which the
21 submissions are to be made places on file with the
22 Register of Copyrights a document identifying the
23 name and address of the person to whom such sub-
24 missions are to be made. The Register of Copyrights

1 shall maintain for public inspection a file of all such
2 documents.

3 “(c) NO ROYALTY FEE REQUIRED FOR CERTAIN
4 SECONDARY TRANSMISSIONS.—A satellite carrier whose
5 secondary transmissions are subject to statutory licensing
6 under paragraphs (1) and (2) of subsection (a) shall have
7 no royalty obligation for such secondary transmissions.”;

8 (2) in subsection (f)—

9 (A) in paragraph (1)(B), by striking “\$5”
10 and inserting “\$250”; and

11 (B) in paragraph (2)—

12 (i) in subparagraph (A)(ii), by strik-
13 ing “\$250,000” and inserting
14 “\$2,500,000”; and

15 (ii) in subparagraph (B)(ii), by strik-
16 ing “\$250,000” and inserting
17 “\$2,500,000”; and

18 (3) in subsection (j)—

19 (A) by redesignating paragraphs (3), (4),
20 and (5) as paragraphs (4), (5), and (6), respec-
21 tively; and

22 (B) by inserting after paragraph (2) the
23 following new paragraph:

24 “(3) LOW POWER TELEVISION STATION.—The
25 term ‘low power television station’ means a low

1 power television as defined under section 74.701(f)
 2 of title 47, Code of Federal Regulations, as in effect
 3 on June 1, 2004. For purposes of this paragraph,
 4 the term ‘low power television station’ includes a low
 5 power television station that has been accorded pri-
 6 mary status as a Class A television licensee under
 7 section 73.6001(a) of title 47, Code of Federal Reg-
 8 ulations.”.

9 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

10 Section 338(a) of the Communications Act of 1934
 11 (47 U.S.C. 338(a)) is amended—

12 (1) by amending the first paragraph (3) to read
 13 as follows:

14 ~~“(3) CARRIAGE OF LOW POWER, SIGNIFICANTLY~~
 15 ~~VIEWED, AND SPECIAL EXCEPTION STATIONS OP-~~
 16 ~~TIONAL.—No station whose signal is provided under~~
 17 ~~paragraph (2) or (3) of section 122(a) of title 17,~~

18 *“(3) CARRIAGE OF LOW POWER, SIGNIFICANTLY*
 19 *VIEWED, SPECIAL EXCEPTION, AND SHORT MARKET*
 20 *STATIONS OPTIONAL.—No station whose signal is pro-*
 21 *vided under paragraph (2), (3), or (4) of section*
 22 *122(a) of title 17, United States Code, shall be enti-*
 23 *tled to insist on carriage under this section, regard-*
 24 *less of whether the satellite carrier provides sec-*
 25 *ondary transmissions of the primary transmissions*

1 of other stations in the same local market pursuant
 2 to such section 122, nor shall any such carriage be
 3 considered in connection with the requirements of
 4 subsection (c) of this section.”; and

5 (2) by redesignating the second paragraph (3)
 6 (relating to effective date) and paragraph (4) as
 7 paragraphs (4) and (5), respectively.

8 **SEC. 5. EXTENSION OF AUTHORITY.**

9 Section 4(a) of the Satellite Home Viewer Act of
 10 1994 (17 U.S.C. 119 note; Public Law 103–369) is
 11 amended by striking “December 31, 2009” and inserting
 12 “December 31, 2014”.

13 **SEC. 6. MODIFICATIONS TO THE CABLE STATUTORY LI-**
 14 **CENSE.**

15 (a) UPDATE AND CLARIFICATION OF ROYALTY CAL-
 16 CULATION METHODOLOGY.—Section 111(d)(1) of title 17,
 17 United States Code, is amended by striking subpara-
 18 graphs (B), (C), and (D) and inserting the following:

19 “(B) except in the case of a cable system
 20 whose royalty fee is specified in subparagraph
 21 ~~(C)~~ ~~or (D)~~ *(E) or (F)*, a total royalty fee for the
 22 period covered by the statement, computed on
 23 the basis of specified percentages of the gross
 24 receipts from subscribers to the cable service
 25 during said period for the basic service of pro-

viding secondary transmissions of primary
broadcast transmitters, as follows:

“(i) 1.064 per centum for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to clauses (ii) through (iv).

“(ii) 1.064 per centum of such gross receipts for the first distant signal equivalent.

“(iii) 0.701 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents.

“(iv) 0.330 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each distant signal equivalent thereafter;

“(C) in computing the amounts payable under clauses (ii) through (iv) *of subparagraph (B)*, any fraction of a distant signal equivalent shall be computed at its fractional value or in the case of any cable system located partly

1 within and partly without the local service area
2 of a primary transmitter, gross receipts shall be
3 limited to those gross receipts derived from sub-
4 scribers located without the local service area of
5 such primary transmitter;

6 “(D) in computing the amounts payable
7 under clauses (ii) through (iv) *of subparagraph*
8 *(B)*, if a cable system provides a secondary
9 transmission of a primary transmitter to some
10 but not all communities served by that cable
11 system, the gross receipts and the distant signal
12 equivalent values for each secondary trans-
13 mission shall be derived solely on the basis of
14 the subscribers in those communities where the
15 cable system provides each such secondary
16 transmission, provided, however, that the total
17 royalty fee for the period paid by such system
18 shall in no event be less than the royalty fee
19 calculated in accordance with clause (i) *of sub-*
20 *paragraph (B)* multiplied by the gross receipts
21 from all subscribers to the system; and provided
22 further, that a cable system that on a state-
23 ment submitted prior to the date of enactment
24 of the Satellite Television Modernization Act of
25 2009, computed its royalty fee consistent with

1 the methodology in ~~this subparagraph~~*this para-*
 2 *graph* or that amends a statement filed prior to
 3 the date of enactment of such Act to compute
 4 the royalty fee due using this methodology shall
 5 not be subject to an action for infringement, or
 6 eligible for any royalty refund, arising out of its
 7 use of such methodology on such statement;

8 “(E) if the actual gross receipts paid by
 9 subscribers to a cable system for the period cov-
 10 ered by the statement for the basic service of
 11 providing secondary transmissions of primary
 12 broadcast transmitters total \$263,800 or less,
 13 gross receipts of the cable system for the pur-
 14 pose of this subparagraph shall be computed by
 15 subtracting from such actual gross receipts the
 16 amount by which \$263,800 exceeds such actual
 17 gross receipts, except that in no case shall a
 18 cable system’s gross receipts be reduced to less
 19 than \$10,400. The royalty fee payable under
 20 this subparagraph shall be 0.5 of 1 per centum,
 21 regardless of the number of distant signal
 22 equivalents, if any; and

23 “(F) if the actual gross receipts paid by
 24 subscribers to a cable system for the period cov-
 25 ered by the statement for the basic service of

1 providing secondary transmissions of primary
2 broadcast transmitters are more than \$263,800
3 but less than \$527,600, the royalty fee payable
4 under this subparagraph shall be—

5 “(i) 0.5 of 1 per centum of any gross
6 receipts up to \$263,800; and

7 “(ii) 1 per centum of any gross re-
8 ceipts in excess of \$263,800 but less than
9 \$527,600 regardless of the number of dis-
10 tant signal equivalents, if any.”.

11 (b) NO QUINQUENNIAL ADJUSTMENTS UNTIL
12 2015.—Section 804(b) of title 17, United States Code, is
13 amended by striking “2005” each place that term appears
14 and inserting “2015”.

15 (c) ACCEPTANCE OF ADDITIONAL DEPOSITS.—Any
16 royalty fee payments received by the Copyright Office
17 from cable systems for the secondary transmission of pri-
18 mary broadcast transmitters (as such terms are defined
19 in subsection (f) of section 111 of title 17, United States
20 Code) that are in addition to the payments calculated and
21 deposited in accordance with subsection (d) of such section
22 111 shall be deemed to have been deposited for the par-
23 ticular accounting period during which they are received
24 and shall be distributed as specified in subsection (d) of
25 such section 111.

1 (d) EFFECTIVE DATE OF NEW ROYALTY FEE
 2 RATES.—The royalty fee rates established in section
 3 111(d)(1)(B) of title 17, United States Code, as amended
 4 by subsection (a), shall take effect beginning with the
 5 statement of account covering the first accounting period
 6 in 2010.

7 **SEC. 7. REPORT ON MARKET BASED ALTERNATIVES TO**
 8 **STATUTORY LICENSING.**

9 *Not later than 1 year after the date of enactment of*
 10 *this Act, and after consultation with the Federal Commu-*
 11 *nications Commission, the Copyright Office of the Library*
 12 *of Congress shall submit to the Committees on the Judiciary*
 13 *of the Senate and House of Representatives a report con-*
 14 *taining—*

15 (1) *proposed mechanisms, methods, and rec-*
 16 *ommendations on how to implement a phase-out of*
 17 *the current statutory licensing requirements set forth*
 18 *under sections 111, 119, and 122 of title 17, United*
 19 *States Code, by making such sections inapplicable to*
 20 *the retransmission of a performance or display of a*
 21 *work embodied in a primary transmission of a broad-*
 22 *cast station that is authorized to license the same re-*
 23 *transmission directly with respect to all of the per-*
 24 *formances and displays embodied in its primary*
 25 *transmission;*

1 (2) *any recommendations for alternative means*
2 *to implement a timely and effective phase-out of the*
3 *current statutory licensing requirements set forth*
4 *under sections 111, 119, and 122 of title 17, United*
5 *States Code; and*

6 (3) *any recommendations for legislative or ad-*
7 *ministrative actions as may be appropriate to achieve*
8 *such a phase-out.*

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11TH CONGRESS
1ST Session

S. 1670

A BILL

To reform and modernize the limitations on exclusive rights relating to secondary transmissions of certain signals.

SEPTEMBER 24, 2009

Reported with amendments